IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5206 of 2000
With
CIVIL APPLICATION No 10560 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANDYA YOGESH PRABHUDAS
Versus
DISTRICT PRIMARY EDUCTION OFFICER

Appearance:
MRS MADHUBEN SHARMA for Petitioner
MR PREMAL R JOSHI for Respondent

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/06/2001

ORAL JUDGEMENT

#. This special civil application is filed by the petitioner challenging the action of the respondent in

not considering his case for appointment on the post of Vidhya Sahayak (Music Teacher).

#. It is the say of the petitioner that on the basis of the public advertisement for the recruitment on the post of Vidhya Sahayak (Music Teacher), he applied for appointment on the said post. The said advertisement was published on 30.4.1999. On the basis of the application of the petitioner, he was selected and was kept in the waiting list at serial No.1. By the aforesaid advertisement 17 posts of Vidhya Sahayak (Music Teacher) were advertised. It is also mentioned therein that certain posts are reserved for reserved category. The petitioner, as stated earlier, was kept in the waiting list at serial No.1. Thereafter, candidates who were at serial nos.2 and 3 in waiting list were appointed on the aforesaid post. Therefore, the petitioner made a representation on 15.12.1999 to the District Primary Education Officer and pointed out that even though he was at serial No.1 in the waiting list, those who are at serial Nos.2 and 3 from the said list have been appointed, and therefore, he should be given the appointment on the post of Vidhya Sahayak (Music Teacher). He again addressed a letter to the District Primary Education Officer on 16.3.2000, but since nothing further was done, the petitioner subsequently filed this petition in which it was prayed that the action of the authority in bypassing his claim and the appointment of the persons below the petitioner in the waiting list is illegal and arbitrary.

#. Ms.Sharma, learned advocate for the petitioner argued that from the earlier list in which the name of the petitioner has appeared, there are still three posts vacant and that no other candidates except the petitioner can be considered as the petitioner is now the only person who is left out as even the waiting list which was of two persons also got exhausted in view of the fact that the persons below the petitioner in the waiting list were appointed.

#. Ms.Sharma in the rejoinder affidavit has stated that the respondent has exceeded the quota for reservation by reserving more posts than what is required to be reserved for the categories of Physically Handicapped and Blind and only 4% posts could have been reserved, instead the appointment is given on 10 posts from the reserved categories which could not have been done.

#. The District Primary Education Officer filed the affidavit-in-reply wherein he has pointed out that simply

because the name of the candidate is included in the select list/waiting list, no vested right is conferred for getting appointment. It is pointed out that on the basis of the advertisement in question, provisional merit list was prepared and the name of the petitioner was shown at serial No.1 in the general waiting list. It is pointed out that so far as the Music Teacher teacher is concerned, normally preference is given to a person who is blind. The petitioner who is in general category is therefore not appointed as the preference was given to the candidates at serial nos.2 and 3 from the waiting list as such candidates are blind. As per the scheme, preference was required to be given to a person who is blind. It is pointed out that even the candidates who have secured higher marks than the petitioner are not appointed on the post of Vidhya Sahayak (Music Teacher). It is therefore submitted by Mr.Joshi, learned advocate appearing for the respondent that in view of the preference which was required to be given to the category of blind person and considering the fact that even those candidates who have secured higher marks than the petitioner have not been given the appointment on the post of Vidhya Sahayak (Music Teacher) and considering the provision in the scheme about the preference to such blind category, no relief can be given to the petitioner. He further submitted that even the provision in the scheme regarding giving preference to the blind category is not challenged.

#. I have considered the arguments of both the learned advocates as well as the affidavit-in-reply filed by the District Primary Education Officer.

#. It is required to be noted that in the advertisement nowhere it is mentioned that any preference was required to be given to the category of blind. It seems that there are no recruitment rules which are framed for the post in question. Normally, certain percentage of post is required to be reserved for the category of physically handicapped, otherwise it may result into total reservation for a particular category of the employees and if the preference is required to be given only to one category then if all the candidates of that category are available then there may not be any post available for the general category at all. Since no pleading or prayer regarding the question about giving preference to the blind in the scheme itself is made by the petitioner, therefore, it is not necessary to go in detail about the same in this petition. The only question which is required to be considered is whether the action of the respondent in operating the waiting list by appointing

the persons below the petitioner and by bypassing the claim of the petitioner is proper or not.

#. At this stage, it is required to be noted that the petitioner has not joined those candidates who have been appointed by the respondent on the post in question. Their appointment therefore cannot be cancelled or disturbed and no direction can be given in this petition. It is also required to be noted that even the candidates in the general waiting list who have secured higher marks than the petitioner have also not been selected as the preference is given to the candidates who belonged to blind category.

#. So far as the argument of Ms.Sharma regarding the earlier list is concerned, the respondent may consider the question whether the petitioner can be absorbed on the post of Vidhya Sahayak (Music Teacher) on the basis of his name having appeared in the waiting list at serial No.1. If that waiting list was of two persons and two persons are already appointed, therefore, now the petitioner only is left out and therefore his case can be considered sympathetically as per the rules and regulations.

##. It is clarified that this court is not disturbing the appointment of the persons who are already appointed as even they are not made parties before this Court. If there is a post available in the general category for which the petitioner had applied, his case for appointment may be considered by the department if otherwise he is found suitable for the appointment on the post in question. It is required to be noted that the case of the petitioner is obviously to be considered in accordance with law and as per the rules. It is no doubt true that simply because name of a candidate appears in the select list/waiting list, that itself cannot create any right for getting an appointment in favour of such candidate. However, whether the decision for not making appointment was bona fide or not can certainly be considered by the Court. However, it is required to be noted that there is no material before the Court to find out whether any post from the earlier selection list is available or not or whether the select list/waiting list continued thereafter or not. The matter is therefore required to be sent back to the concerned authority to decide the said question afresh about the claim of the petitioner for the post in question i.e. Vidhya Sahayak (Music Teacher). The authority will thereafter find out whether it is possible to accommodate the petitioner on the post in question on the basis of the application

which he had made on the basis of the advertisement. The appropriate order on such representation may be passed by the authority.

##. It is clarified that the order of this court may not be taken into consideration as direction for giving any appointment order to the petitioner. The matter is sent back to the respondent authority only for reconsideration of the question about the appointment of the petitioner as observed in the order. It is for the respondent thereafter to take decision considering the various aspects of the subject matter within a period of three months from today. The petition is accordingly partly allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

##. In view of the above order, no order in Civil Application No.10560 of 2000 and the same stands disposed of accordingly.

(P.B.Majmudar,J)
(pathan)